

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 92

INTRODUCER: Criminal Justice Committee and Senator Negron and others

SUBJECT: Searches and Seizures

DATE: March 11, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.	Anderson	Yeatman	CA	Favorable
3.	Shankle	Cibula	JU	Pre-meeting
4.			ACJ	
5.			AP	
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 92 creates the “Freedom from Unwarranted Surveillance Act,” which prohibits law enforcement agencies from using drones to gather evidence or other information, unless:

- The U.S. Secretary of Homeland Security determines that credible intelligence exists indicating a high risk of a terrorist attack by an individual or organization.
- The law enforcement agency first obtains a search warrant authorizing the use of a drone.
- The law enforcement agency has reasonable suspicion that swift action is necessary to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or the destruction of evidence.

Evidence gathered in violation of the bill is inadmissible in a criminal prosecution in any court of law in this state. Provisions are made for civil actions by an aggrieved party against a law enforcement agency that violates the prohibitions in the bill.

The bill defines the terms “drone” and “law enforcement agencies” for the purposes of the act.

This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Drones Historically Utilized by Military in Warfare, Hostile Situations

Drones, also called Unmanned Aerial Vehicles and Unmanned Aerial Systems, will be referred to as “drones” in this bill analysis.

Although drones were utilized as far back as the war in Vietnam, the term “drone” recently became part of the vernacular since the use of drones by the U.S. military has become common knowledge among the civilian population.¹ Because drones are unmanned aircraft, they are especially useful in search and destroy missions where military personnel would otherwise be placed in harm’s way.

Drones are highly capable of gathering military intelligence because drones are difficult to detect and can carry sophisticated surveillance equipment. For example, the U.S. Army recently acquired a 1.8 gigapixel camera to use on its drones which can track objects on the ground from 65 miles away while the drone is flying at an altitude of 20,000 feet.² Drones can be equipped with infrared cameras,³ license plate readers,⁴ and “ladar” (laser radar).⁵ It has been reported that in 2011 the U.S. Army contracted with two corporations to develop facial recognition and behavioral recognition technologies for drone use.⁶

Drones range in size from wingspans of 6 inches to 246 feet and can weigh from approximately 4 ounces to over 25,600 pounds.⁷ They may be controlled manually or through an autopilot which uses a data link to connect the drone’s pilot to the drone.⁸

Non-Military Drone Flight in the United States

As far back as 2007, the Federal Aviation Administration (FAA) was aware of approximately 50 companies, universities, and government organizations developing and producing some 155 drone designs in the United States.⁹

¹ *Unmanned Aerial Vehicles Support Border Security*, Customs and Border Protection Today, July 2004, www.cbp.gov/xp/CustomsToday/2004/Aug/other/aerial_vehicles.xml.

² *Drones in Domestic Surveillance Operations*, Congressional Research Service, September 6, 2012, www.fas.org/sgp/crs/natsec/R42701.pdf.

³ These cameras are capable of “seeing” based upon the relative levels of heat in its viewing area. For example, see <http://www.draganfly.com/uav-helicopter/draganflyer-x6/features/flir-camera.php>.

⁴ *Drones in Domestic Surveillance Operations*, Congressional Research Service, September 6, 2012, www.fas.org/sgp/crs/natsec/R42701.pdf; *Unmanned Aerial Vehicles Support Border Security*, Customs and Border Protection Today, July 2004, www.cbp.gov/xp/CustomsToday/2004/Aug/other/aerial_vehicles.xml.

⁵ “Ladar” is reported to produce three-dimensional images and has the capability to “see” through trees and foliage. *Drones in Domestic Surveillance Operations*, Congressional Research Service, September 6, 2012, www.fas.org/sgp/crs/natsec/R42701.pdf; U.S. Army, UAS Center for Excellence, *Eyes of the Army, US Army Roadmap for Unmanned Aircraft Systems 2010-2035* (2010).

⁶ Clay Dillow, Popular Science, September 28, 2011, popsci.com/technology/article/2011-09/army-wants-drones-can-recognize-your-face-and-read-your-mind.

⁷ 14 CFR Part 91, Docket No. FAA-2006-25714, Department of Transportation, Federal Aviation Administration, *Unmanned Aircraft Operations in the National Airspace System*, February 6, 2007.

⁸ *Id.*

⁹ *Id.*

Drones have been used in a multitude of tasks by U.S. government agencies. The U.S. Customs and Border Patrol began using them in 2004.¹⁰ In February 2010, the U.S. Customs and Border Patrol began operating a center in Cocoa Beach flying eight drones along Florida's shorelines and the Gulf Coast.¹¹

Other documented non-military tasks include earthquake damage assessment at Japan's Fukushima power plant, volcano activity assessment of Mount St. Helens in Washington for the U.S. Geological Survey, and surveying wild fires in Texas.¹²

At the University of Florida, over the last 12 years, the Unmanned Aerial Systems Research Group has been developing an 11 pound drone having a 9 foot wingspan, which is called "Nova 2.1." According to researchers, it can be used to safely and accurately gather data that will be helpful to wildlife biologists and many others.¹³

The drone industry is becoming motivated to move into more civilian markets.¹⁴ Reportedly, Florida is competing to secure a position as a leading development, testing, and manufacturing site for drones.¹⁵

Integrating Drones into the Nation's Airspace System

In February 2012, Congress passed the FAA Modernization and Reform Act of 2012 (Act), which requires the FAA to safely open the nation's airspace to drones by September 2015.¹⁶ Under the timetable set forth by Congress, the FAA authorized government public safety agencies to operate drones under certain restrictions and made the process for approving authorization requests more efficient.¹⁷

However, the FAA appears to be proceeding with caution in its implementation of the 2012 Federal Act. The FAA has delayed selecting the six test sites for drones mandated by Congress. Further, although it seems to be outside the congressional mandate and beyond the scope of the

¹⁰ *Unmanned Aerial Vehicles Support Border Security*, Customs and Border Protection Today, July 2004, www.cbp.gov/xp/CustomsToday/2004/Aug/other/aerial_vehicles.xml.

¹¹ Howard Altman, *Space Florida Probing Drone's Future Potential*, Tampa Bay Online, August 5, 2012, www2.tbo.com/news/breaking-news/2012/aug/05/space-florida-probing-drones-future-potential-ar-453511/.

¹² James Chiles, *Drones for Hire*, Air & Space Smithsonian, January 2013, www.airspacemag.com/flight-today/Drones-for-Hire-179517781.html.

¹³ James Dean, *Florida Hopes to Fill Its Skies with Unmanned Aircraft*, Florida Today, June 23, 2012, <http://usatoday30.usatoday.com/news/nation/story/2012-06-23/increased-drone-use-privacy-concerns/55783066/1>; *UF Team's Work Pays Off With Unmanned-flight System that Captures Valuable Data*, Phys Org, October 20, 2010, <http://phys.org/news/2010-10-uf-team-unmanned-flight-captures-valuable.html>.

¹⁴ *Drones for Hire*, Air & Space Smithsonian, James Chiles, January 2013, www.airspacemag.com/flight-today/Drones-for-Hire-179517781.html.

¹⁵ *Florida Vies to be America's Drone Capital*, RT, June 29, 2010, <http://rt.com/usa/news/florida-drone-space-unmanned-091/print/>.

¹⁶ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012; *Drones in Domestic Surveillance Operations*, Congressional Research Service, September 6, 2012, www.fas.org/sgp/crs/natsec/R42701.pdf.

¹⁷ *FAA Makes Progress with UAS Integration*, Federal Aviation Administration, May 14, 2012, www.faa.gov/news/updates/?newsId=68004; Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012.

FAA's airspace-safety responsibilities, the FAA notified Congress that "privacy issues" are a concern as drones are integrated into the airspace.¹⁸

The 2012 Act directed the FAA to "allow a government public safety agency to operate unmanned aircraft weighing 4.4 pounds or less" under certain restrictions. The Act specified that these drones must be flown within the line of sight of the operator, less than 400 feet above the ground, during daylight conditions, inside Class G (uncontrolled) airspace and more than five miles from any airport or other location with aviation activities.¹⁹

Prior to the passage of the Act in 2012, the FAA and the Department of Justice worked on an agreement to streamline the Certificate of Authorization (COA) process for law enforcement agencies. Initially, law enforcement organizations will receive a COA for training and performance evaluation. When the organization shows proficiency in flying its drone, it will receive an operational COA. The agreement between the FAA and the Department of Justice expands the allowable drone weight up to 25 pounds.²⁰

Drone Use by Law Enforcement Agencies in Florida

The FAA issued COAs to Florida law enforcement agencies beginning in 2009. Those early COAs for training and trial purposes were issued to the Miami-Dade Police Department and the Polk County Sheriff's Office.

Reportedly, officials in Polk County, Florida, decided after a year of drone trials that the costs of meeting FAA regulations were too high and halted use of its fixed-wing model drone in 2010.²¹

The Miami-Dade Police Department received its COA for drone operational status in July 2011. It was renewed in December 2012 for a 2-year period. The department has two Honeywell Corporation T-Hawk Model drones. As of January 8, 2013, the T-Hawk drones had not flown an actual operation.²²

Several Chiefs of Police in Florida have indicated that drones would benefit their agencies by reducing the risk to officers and citizens in high risk situations involving hostages, active shooters or armed, barricaded suspects.²³ One police chief suggested that drones could aid police agencies in their ability to patrol and search for persons in areas like bodies of water or a wooded

¹⁸ A *Bloomberg* report quotes the FAA Acting Chief as having written to members of the Congressional Unmanned Systems Caucus: "However, increasing the use of UAS in our airspace also raises privacy issues, and these issues will need to be addressed as unmanned aircraft are safely integrated." Alan Levine, *FAA Going Slow on Drones as Privacy Concerns Studied*, Bloomberg, November 26, 2012, <http://go.bloomberg.com/political-capital/2012-11-26/faa-going-slow->

¹⁹ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012; FAA Fact Sheet, Unmanned Aircraft Systems, December 14, 2012, http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=14153.

²⁰ FAA Fact Sheet, Unmanned Aircraft Systems, December 14, 2012, http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=14153.

²¹ Howard Altman, *Space Florida Probing Drone's Future Potential*, Tampa Bay Online, August 5, 2012, www2.tbo.com/news/breaking-news/2012/aug/05/space-florida-probing-drones-future-potential-ar-453511/.

²² Miami-Dade Police Department Fact Sheet, Special Patrol Bureau/Aviation Unit, Micro Air Vehicle "MAV" Program, provided to Senate Committee on Criminal Justice Staff, January 8, 2013.

²³ Memo provided to Senate Committee on Criminal Justice Staff on December 12, 2012, by the Florida Police Chiefs Association.

area.²⁴ According to another police chief, drone technology provides an opportunity to conduct patrols that are normally conducted by traditional aviation at a fraction of the cost.²⁵ A third police chief mentioned that a drone would be useful in serving high-risk search warrants, natural disasters, and other emergencies.²⁶ A fourth suggested that drones could diminish public safety risks that might otherwise occur during a high-speed car-chase because a drone could more safely follow a fleeing vehicle.²⁷

Federal and Other State Legislation

Senator Rand Paul filed a bill in Congress in 2012 which was essentially identical to Senate Bill 92. Neither the Senate bill nor its House companion bill made it out of committee.²⁸ Similar legislation is expected to be filed in California, Illinois, New Jersey, Oregon, Missouri, Michigan, Indiana, and Virginia.²⁹

III. Effect of Proposed Changes:

The short title for the bill is the “Freedom from Unwarranted Surveillance Act.” The bill prohibits law enforcement agencies from using drones to gather evidence or other information, except in certain narrow circumstances. Evidence obtained or collected by a law enforcement agency using a drone, unless it is permitted under one of the bill’s exceptions, is not admissible in a criminal prosecution in any court of law in this state.

The CS provides exceptions to the prohibition of drone use by a law enforcement agency in an information or evidence-gathering capacity. Under the exceptions, a law enforcement agency may use a drone if:

- The U.S. Secretary of Homeland Security determines that credible intelligence exists indicating a high risk of a terrorist attack by an individual or organization.
- The law enforcement agency first obtains a search warrant authorizing the use of a drone.
- The law enforcement agency has reasonable suspicion that swift action is necessary to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or the destruction of evidence.

The bill defines a drone as a powered aerial vehicle that:

- Is unmanned;
- Is capable of flying autonomously or being piloted remotely;
- Uses aerodynamic forces to provide lift;

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Preserving Freedom from Unwarranted Surveillance Act of 2012*, S.3287, H.R. 5925.

²⁹ Dave Kolpack, *New ND Lawmaker 1 of Many Drafting Drone Measures*, AP, January 4, 2013. The North Dakota bill appears to have been filed in response to a local case where the Border Patrol offered the use of its drone to verify that three armed men were no longer armed or on the premises where law enforcement was investigating an alleged cattle rustling situation. See *State v. Brossart*, No. 32-2011 CR-00049 (N.E. Cen. D., N.D. 2012).

- Can be expendable or recoverable; and
- Can carry a lethal or nonlethal payload.

This definition is consistent with the standard definition of drones used by numerous military organizations.³⁰

The bill defines a law enforcement agency as a lawfully established state or local public agency that is responsible for the prevention and detection of crime, local code enforcement, and the enforcement of penal, traffic, regulatory, game, or controlled substance laws.

In addition to the inadmissibility of evidence the bill allows for an aggrieved party to initiate a civil action to prevent or remedy a violation of the prohibitions in the bill.

The bill takes effect on July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Fourth Amendment to the United States Constitution guarantees the people in this country security in their houses, persons, papers, and possessions from unreasonable searches and seizures by government actors.³¹

Article I, Section 12 of the Constitution of Florida contains the same guarantees as the Fourth Amendment, with an additional provision extending protection to private communications. Article I, Section 12 also states that it “shall be construed in conformity with the Fourth Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the Fourth Amendment to the United States Constitution.”³²

³⁰ United States Army Combined Arms Center, Unmanned Aerial Vehicle, <http://usacac.army.mil/cac2/call/thesaurus/toc.asp?id=31004> (last visited Mar. 7, 2012).

³¹ U.S. CONST. amend. IV.

³² FLA. CONST. art. I, s. 12 provides:
Searches and seizures.—

The U.S. Supreme Court has not heard a case that implicates the Fourth Amendment as related to a search by a drone. However, the court has heard several cases involving aerial searches by law enforcement officers in more conventional aircraft. In *Florida v. Riley* and *California v. Ciraolo*, which were cases involving surveillance from altitudes of 400 and 1,000 feet in close proximity to homes, the court found that no search had occurred.³³ Therefore it may be argued that a drone flying or hovering at an uncommon altitude, utilizing uncommon surveillance equipment could implicate the Fourth Amendment.

A court may not need to address the question of the reasonableness of a police search by use of a drone under Fourth Amendment precedence may not be reached at all. The protection provided in the bill could be viewed by courts as a statutorily-created citizen protection that does not implicate the Fourth Amendment.³⁴ Additionally, states are generally free to place even more rigorous restraints upon state governmental intrusion than federal law requires.³⁵

Courts could focus on the fact that the bill *does not subject citizens* to a drone search let alone an unreasonable one, but rather the bill *prohibits or limits* certain *law enforcement conduct*, and that it is within the Legislature's power to protect citizens from police conduct just as it is within its power to subject citizens to police action. If the court finds that law enforcement violated the drone law, the court should rule the evidence derived as a result of that violation inadmissible.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill does not apply to the use of drones for any purposes other than state and local law enforcement use to gather evidence or other information. It does not restrict the use of drones for commercial or private research and information gathering in any way and, therefore, should have no impact on the scientific, commercial, or educational sectors.

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.

³³ *California v. Ciraolo*, 476 U.S. 207 (1986); *Florida v. Riley*, 488 U.S. 445 (1989).

³⁴ The bill provides that evidence obtained is not admissible in a criminal prosecution in any court of law in Florida if that evidence is obtained in violation of the bill's prohibited drone use by law enforcement, unless the drone use falls within one of the bill's exceptions.

³⁵ *Traylor v. State*, 596 So. 2d 957, 961 (Fla. 1992).

Law enforcement agencies are not permitted to use information or evidence that is gathered through the prohibited use of a drone in a criminal prosecution. Therefore, citizens should not be subject to criminal prosecution in cases that are based upon information or evidence gathered beyond the scope of the bill's exceptions, unless the case can be prosecuted on some independent basis.

C. Government Sector Impact:

State and local law enforcement agencies are prohibited by the bill from using drones to gather evidence or information unless the use of the drone falls under one of the bill's exceptions to the prohibition. The evidence obtained or collected in violation of the prohibition, and outside the exceptions in the bill, is inadmissible as evidence in a criminal prosecution. Therefore, some criminal cases built around such evidence may be weakened or unprovable.

Law enforcement agencies may be subject to civil remedies, such as monetary damages or possibly an injunction preventing further drone activity, if sought by an aggrieved party under the provisions of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on January 15, 2013:

- The CS includes local government code enforcement within the definition of law enforcement agency.
- The CS adopts additional exceptions to the drone-use prohibition in the bill. One of the additional exceptions allows law enforcement to use a drone if it is first authorized by a judge in a search warrant. The other exception to the prohibition occurs when a law enforcement agency possesses reasonable suspicion that under particular circumstances, swift action is necessary in order to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or the destruction of evidence.

B. Amendments:

None.